Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal From Order No.1116 of 2001
(Old No.798 of 1990)

(1) Shambhoo Lal S/o Hori Lal,
(2) Suresh S/o Shambhu Lal,
(3) Km.Mithlesh D/o Shambhu Lal,
(4) Km.Meeta D/o Shambhu Lal,
(5) Km.Suneeta D/o Shambhu Lal,
(6) Km.Vimineesh D/o Shambhu Lal
All residents of Village-Faghpur, P.S.-
Banbasa, District-Nainital.

..... Appellants/Petitioners

Versus

(1)Tasleem Beg
(2)Saeedan Begum
Owner of Truck No.URW-144,
R/o Mohalla Garhi Chaudhari,
P.S. Kila, Tehsil and District Bareilly.
(3)The New India General Insurance
Company Ltd., 85-A Civil Lines, Bareilly.

..... Respondents/Opp.parties

Sri B.S.Khanka Advocate for the appellants-claimants.
Sri Pankaj Miglani Advocate for the respondents Nos. 1 & 2.
Sri T.A.Khan Advocate for the respondent No.3.

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Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This is an appeal filed under Sec. 110-D of the Motor Vehicles Act, 1939 against the judgment and order dated 11.05.1990 passed by the I Additional District Judge/Motor Accident Claims Tribunal, Nainital in Motor Accident Claim Case No. 54 of 1989 under Sec. 110-A of Motor Vehicle Act, 1939 and Motor Accident Claim Case No. 55 of 1989 under Sec. 92-A of the aforesaid Act for interim compensation, whereby both the claim petitions have been dismissed by the Tribunal.

Brief facts of the case are that the accident took place on 19.01.1989 when the deceased Dinesh S/o Shambhu Lal was coming on Cycle with Rajendra S/o Ram Kumar for harvesting fodder for the animals. When they reached at Budha bridge at about 4.30 p.m., they were hit by Truck No. URW 144 on account of rash and negligent driving of driver Abdul Rahf which was coming from Tanakpur. At the time of accident the deceased was on cycle on the left side of the road. After hit by the truck the deceased fell down and was crushed by the wheels of the truck and he died on the spot. The father, brother and sisters of the deceased filed Motor Accidemt Claim Case No.54 of 1989 and No.55 of 1989 for compensation. The claimants claimed Rs. 2,50,000/- as compensation on the basis that claimants suffered loss of Rs. 1500/- per month and also the mental agony due to the death of deceased Dinesh. The truck was insured with the opposite party No.3-New India General Insurance Company Ltd. The insurance has not been denied by the Insurance Company before the Motor Accident Claims Tribunal. The insurer and insured both filed their objections before the Tribunal. The defence was set up that accident did not take place by the truck as at the time of accident the truck in question was in Banbasa at the border of Nepal. The Motor Accident Claims Tribunal framed the following issues:-

(1) Whether the death of deceased was occurred in the accident by Truck bearing No. URW 144 ?

(2) Whether the Truck in question was somewhere else at the time of accident as alleged by opposite parties No. 1 & 2?

(3) Whether at the time of accident the truck in question was being driven rashly and negligently as alleged by the claimants ?

(4) To what amount of compensation, if any, and from which the claimants are entitled ?

The Tribunal decided issues Nos. 1, 2 & 3 together and held that Rajendra Singh, who was eye witness of the accident, was not examined by the claimants in support of his case. The Tribunal also ignored the statement of Om Prakash who was also eye witness on the ground that his name did not find place in the F.I.R. who stated in his statement that he had seen the accident and had noted the Truck Number. The Tribunal disbelieved the statement of Om Prakash only on the ground that he had stated in his statement that the number was written on the black plate with white letters, while the truck was a public carrier, therefore the number plate of the truck was white with the black letters. The Tribunal doubted the statement of Om Prakash and ignored it. Though the Tribunal noticed that in his statement, Om Prakash had stated that he was at the distance of 150-200 steps and the statement was being recorded after a long time. There could be a slip regarding colour of the number plate and numbers written on it. Merely on this ground the statement of Om Prakash could not have been ignored. The truck was taken into coustody by the police authorities after the F.I.R. was loged regarding the said accident and death. The Tribunal did not deal with those papers. The tribunal also did not deal with the statement of Shambhu Lal who is the father of the deceased and is one of the claimants to whom the entire story was narrated by Om Prakash who was the eye

witness. Paper No.42-C is F.I.R. on record, which clearly establishes the occurrence of accident and death of the deceased by the truck No. URW 144. The statement of Jaggu Lal was also examined who has also stated that Rajendra told him about the said occurrence and he proved the accident. Therefore, on appreciation of all this evidence, we hold that the finding recorded by the Tribunal that the alleged accident was occurred by Truck No. URW 144 was not proved, is contrary to the evidence on record. Therefore, we set aside the said finding and we hold that on the basis of this evidence, which is on record, the accident took place due to rash and negligent driving of the driver of truck No. URW 144. Therefore, the claimants were entitled to compensation from the Insurance Company as the truck in question was insured at the time of accident.

Now coming to the quantum of compensation to be paid to the claimants. Considering the claim raised by the claimants we proceed to determine the compensation. The income of the deceased was Rs. 1500/- per month as stated in the claim petition. The age of the deceased was 20 years. In the statement it has come that his marriage had been settled and it was to be solemnized soon. Therefore, one-third would be the basis of calculating the compensation i.e. Rs. 1,000/- per month. As such, the compensation is to be determined taking into account the income of Rs. 1,000/- per month. The father was the sole dependent on the deceased while the dependency of his sisters goes to another brother also. It is admitted that the sisters of the deceased were not minors. Since the father and brother of the deceased are alive and the father is entitled for compensation, therefore the sisters' dependency would be on the father and brother. It has come in the

statement that the age of the father of the deceased was 44 years. According to the schedule, at this stage a multiplier of '**15**' is to be applied. Applying the multiplier of 15 at Rs. 1,000/- per month it comes to Rs. 1,80,000/-.

Therefore, the appeal is allowed accordingly. The impugned judgment and order dated 11.05.1990 is set aside. The claim petition is decreed for Rs.1,80,000/- as compensation against the Opp.party No.3-the New India General Insurance Company Ltd. alongwith interest at the rate of 9% (nine per cent) per annum from the date of application till the date of final payment. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

12.08.2004
P.Singh